



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE CONSUMER PROTECTION BOARD

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George E. Pataki
Governor

Ann Kutter
Deputy Executive Director

May 15, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-98: Implementation of Local
Competition Provisions in the Telecommunications Act.

DOCKET FILE COPY ORIGINAL

Dear Mr. Secretary:

Enclosed please find an original and twelve copies of the Comments of the New York State Consumer Protection Board in CC Docket No. 96-98. A copy was filed with Ms. Janice Myles of the Common Carrier Bureau and with the Commission's copy contractor.

Very truly yours,

Ann Kutter
Deputy Executive Director

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of

Implementation of the Local
Competition Provisions in the
Telecommunications Act

CC Docket No. 96-98

COMMENTS OF THE NEW YORK STATE
CONSUMER PROTECTION BOARD

The New York State Consumer Protection Board (NYCPB) -- a state agency which represents the interests of New York's residential and small businesses -- respectfully submits these comments in response to the Notice of Proposed Rulemaking released April 19, 1996 (NPRM). In general, the goal of this proceeding is to establish rules to help ensure the rapid development of competition in local telecommunications markets. The NYCPB recommends that this objective be achieved through federal policies which recognize that individual states are in the best position to ensure a smooth transition to local competition while protecting against service disruptions and local rate increases. We therefore recommend providing states sufficient flexibility to design pro-competitive local telecommunications policies which further the goals of the Telecommunications Act of 1996 (1996 Act).

The 1996 Act seeks to develop robust competition in telecommunications markets by removing legal and regulatory barriers to entry and reducing economic impediments to efficient market entry by new competitors. Such competition will increase consumer choice and promises to result in reduced prices and improved service.

The statute creates general duties and obligations for telecommunications carriers which are expected to lead to effective competition in local telecommunications markets by providing all competitors access to facilities needed to complete local calls. For example, Section 251 of the 1996 Act requires incumbent LECs to offer competitors interconnection to their networks, to unbundle network elements and to offer their services at wholesale rates for resale by other carriers. Section 252 of the Act sets forth procedures that telecommunications carriers must follow to develop contracts with other carriers which satisfy the requirements of Section 251. It also authorizes state utility commissions to resolve disputed issues through arbitration. And Section 253 of the statute directs the FCC to preempt state and local laws and regulations that restrict the provision of telecommunications services.

The NPRM seeks to establish FCC rules to implement these sections of the 1996 Act. Currently, individual states have authority over intrastate communications. The NPRM tentatively concludes, however, that Sections 251 and 252 of the 1996 Act apply to both interstate and intrastate aspects of interconnection,

service, and network elements, and that FCC regulations implementing those provisions -- including pricing -- apply to interstate and intrastate telecommunications services. (NPRM, at 16) It contends that a number of benefits could flow from national rules governing interconnection and other issues critical to achieving local competition. (NPRM, at 14-15) For example, the FCC contends that explicit national rules could facilitate new market entry, lead to cost efficiencies and guide regulatory bodies and the courts in interpreting, arbitrating and enforcing the statute. (Id.)

The NYCPB respectfully disagrees with this approach. We believe that the FCC should develop some rules to address issues that are most critical to the successful development of competition. However, those rules should preserve broad discretion for individual states to resolve specific issues consistent with the 1996 Act while reflecting state-specific factors.

Some Federal rules may be needed to expedite the transition to competition. For example, as explained in the NPRM, more than 30 states have not adopted laws or regulations providing for local competition. Further, many of those states had provisions that specifically limited competitive entry into local telecommunications markets. (NPRM, at 5) Explicit national rules should be adopted to remove those barriers to local competition. FCC authority to preempt such clear entry barriers is provided in the 1996 Act. (Telecommunications Act of 1996, § 251(a))

However, individual states should be provided the flexibility

to adopt rules to implement local telecommunications competition which reflect the impact of state-specific technical, demographic, economic, geographic and other factors. For example, individual states are in the best position to develop rules which determine appropriate interconnection points and methods of interconnection. National rules on this issue may be counterproductive due to technical differences among existing telecommunications networks in individual states which affect the number of possible interconnection points and the methods of interconnection. Similarly, states can best balance the competitive impact of specific rules against any local rate impacts that may occur.

Flexible rules would make it easier for states to respond more appropriately to technical, demographic, economic or geographic issues specific to the state without detracting from the overall purposes of the 1996 Act. It would also allow states that have made substantial progress in introducing local competition, such as New York, to continue those efforts rather than backtrack to reflect a different Federal approach.

New York has been in the forefront of the pro-competitive effort to open local markets to competition. It continues to be one of the leading states in removing regulatory and economic barriers to local competition. For example, as recognized in the NPRM, New York has implemented interconnection rules (NPRM, at 22 - 23), established options for interconnection points (NPRM, at 25), implemented unbundling (NPRM, at 34) and is one of the few states to address pricing for transport and termination of traffic among

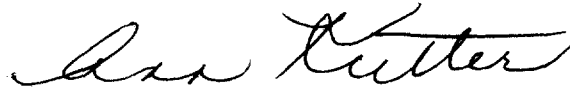
local competitors (NPRM, at 96). These rules further the intent of the 1996 Act.

Accordingly, the FCC should adopt flexible rules to implement the 1996 Act that subsume approaches that have been taken by states such as New York. Further, different approaches among states to further the objectives of the 1996 Act may be beneficial. State experimentation with different approaches to introducing local competition may provide valuable information by which optimal pro-competitive policies can be identified.

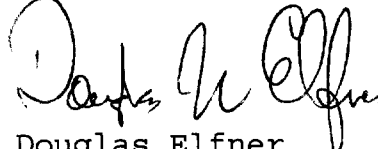
CONCLUSION

The New York State Consumer Protection Board recommends that the FCC adopt rules which provide states sufficient flexibility to design pro-competitive local telecommunications policies which further the goals of the Telecommunications Act of 1996.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ann Kutter".

Ann Kutter
Deputy Executive Director

A handwritten signature in cursive script, appearing to read "Douglas Elfner".

Douglas Elfner
Utility Intervenor